

REMARKS

This responds to the Advisory Action mailed April 20, 2009 and the Final Office Action mailed on January 23, 2009. Claims 14, 19-21, 23, 24, 27, 32, and 34 are amended. Claim 15 is currently canceled. Claims 1-13 were previously canceled without prejudice or disclaimer. No claims are added. As a result, claims 14 and 16-34 are now pending in this application.

Applicant respectfully submits that the amendments to the claims are fully supported by the specification, as originally filed, and no new matter has been added. Applicant hereby respectfully requests further examination and reconsideration of the application in view of the following remarks.

Interview Summary

Applicant thanks Examiner Michael Hobbs for the courtesy of a telephone interview on May 8, 2009, with Applicant's representative Michael P. Horvath. Applicant's representative discussed with Examiner Hobbs comments of the Advisory Action, specifically the comment contending that the amendment presented in response to the Final Office Action incorporated new matter into the claims. A proposed amendment to claim 14 was discussed, and Examiner Hobbs agreed that such an amendment was supported in the specification and would not be considered new matter. Accordingly, claim 14, presented herein, has been amended in accordance with the proposed amendment discussed by Examiner Michael Hobbs and Applicant's representative. In the interest of cost-effectively furthering prosecution, Examiner Hobbs is invited to contact Applicant's representative to further discuss the currently-pending claims should any additional issues arise with respect to the currently-pending claims.

Claim Objections

Claim 15 was objected to for informalities. Applicant has canceled claim 15, thereby rendering the objection to claim 15 moot. Accordingly, Applicant requests withdrawal of the objection to claim 15.

§ 103 Rejection of the Claims

1. Claims 14-21 and 23-32 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Kearney (U.S. Patent No. 5,424,726) in view of Blumenfeld et al. (U.S. Patent Application Publication No. 2003/0151735). In view of the foregoing amendments and following remarks, Applicant respectfully traverses this rejection.

Applicant has canceled claim 15, thereby rendering the rejection of claim 15 moot.

Applicant submits that the references, in combination with the reasoning set forth in the Office Action, does not describe each and every recitation of claims 14, 16-21, and 23-32. For instance, Applicant cannot find in the references, in combination with the reasoning set forth in the Office Action “the observation system includes control software configured to control operation of the observation system, wherein the observation system is configured to: automatically determine cell contours during movement of the camera; automatically store the determined cell contours; and automatically recognize those stored determined cell contours when the camera again moves past the cell culture chamber later on during the observation”, as recited in amended independent claim 14.

Support for the amendment to claim 14 can be found throughout the as-filed specification. For instance, support can be found in the specification at least at the paragraph bridging pages 14-15.

With respect to amended claim 14, Applicant cannot find any description in the references, either alone or in combination, regarding an observation system configured to automatically determine and store cell contours and to automatically recognize those stored determined cell contours when the camera again moves past the cell culture chamber later on during the observation. Although the Office Action at page 4 contends that “the camera of Kearney is fully capable of recognizing stored contours when the camera is indexed”, Applicant can find no description in Kearney stating as much, and the Office Action has not specifically pointed to any such description in Kearney. Although Kearney states that “[t]he invention can be modified to allow morphological analysis by including an automated microscope/CCD camera system, bioreactors with integral optical surfaces and a robotic X-Y-Z translator application”, (Kearney at col. 20, lines 24-28), Kearney appears to lack any description related to an

observation system configured to automatically determine, automatically store, and automatically recognize cell contours. Applicant cannot find any description in Blumenfeld et al. related to an observation system configured to automatically determine, automatically store, and automatically recognize cell contours. For at least these reasons, Applicant submits that the references, in combination with the reasoning set forth in the Office Action, does not describe each and every recitation of claim 14.

Dependent claims 16-21 and 23-32 depend from independent claim 14. Accordingly, each of these claims incorporate the features of claim 14. At least for reasons analogous to those stated above with respect to claim 14, claims 16-21 and 23-32 are accordingly believed to be patentable. For brevity, Applicant defers (but reserves the right to present) further remarks, such as concerning any dependent claims, which are believed separately patentable.

For at least these reasons, Applicant submits that claims 14, 16-21, and 23-32 are allowable over the references, in combination with the reasoning set forth in the Office Action, and respectfully requests reconsideration and withdrawal of this rejection.

2. Claims 22, 33, and 34 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Kearney in view of Blumenfeld et al. and in further view of Pfaller (U.S. Patent No. 6,329,195). Applicant respectfully submits that obviousness does not presently exist because the references, in combination with the reasoning of the Office Action, do not appear to fully encompass the subject matter of claims 22, 33, and 34.

Claims 22, 33, and 34 depend from and incorporate the features of independent claim 14. Therefore, Applicant submits that dependent claims 22, 33, and 34 are patentable over the references, alone or in combination, based upon at least their dependence from claim 14, which is believed to be in condition for allowance for at least the reasons stated above.

Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 22, 33, and 34.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's representative at (612) 359-3275 to facilitate prosecution of this application.

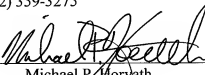
If necessary, please charge any additional fees or deficiencies, or credit any overpayments to Deposit Account No. 19-0743.

Respectfully submitted,

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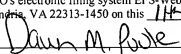
Date May 11, 2009

By


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